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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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DANA DECEMBER SMITH,
Petitioner,

CATHY S. GASTON, CLERK
KANAWHA COUNTY CIRCUIT COURT

vs.

Case No. 97-MISC-43
(Judge Jennifer Bailey Walker)

THOMAS MCBRIDE, WARDEN,
MT. OLIVE CORRECTIONAL CENTER
Respondent.

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PUBLIC DEFENDER
OFFICE

ORDER

The Petitioner, Dana December Smith, petitions the Court for a writ of habeas corpus, seeking to overturn his conviction upon a jury trial of two (2) counts of first degree murder without a recommendation of mercy. The principal issue is the credibility of the "confession" of another person, and whether either the medical evidence of the time of death of the victims or the alleged eyewitness evidence of the victims seen alive after the Petitioner was in the vicinity of the crime are newly discovered evidence which would have changed the result of the trial in which Petitioner was convicted.

PROCEDURAL HISTORY

1. The Petitioner was indicted in the January 1992 Term of the Kanawha County grand jury for two (2) counts of first degree murder, two counts of aggravated robbery and one count of first degree sexual assault.
2. The Petitioner was convicted on December 30, 1992 on two (2) counts of first degree murder without a recommendation of mercy. The aggravated robbery charges were

merged under the theory of felony murder.

3. On January 28, 1993, the Petitioner was sentenced to two terms of life imprisonment without the possibility of parole. Sentencing Tr. 24.
4. On September 9, 2004, his appeal was refused by the West Virginia Supreme Court of Appeals.
5. Petitioner filed his original Petition for Writ of Habeas Corpus in February 1995. A second petition was filed on February 11, 1997 (No. 97-MISC-43). An amended petition was filed by retained counsel on June 19, 2003 and amended on July 28, 2003, *pro se*.
6. On January 20, 2004, the Court appointed the Kanawha County Public Defender to represent the Petitioner.
7. On January 17 and 18, 2006, an omnibus hearing was conducted by the Circuit Court.

FINDINGS OF FACT

8. On Saturday, September 7, 1991, shortly before 5:00 p.m. the Petitioner lost control of a family friend's vehicle and was involved in a single vehicle roll-over crash near Ohley on Cabin Creek Road, Kanawha County, West Virginia. Petitioner suffered minor cuts in the crash. Trial Tr. 2228 - 33, 2243 - 47.
9. The Petitioner was picked-up hitchhiking and dropped off near the town of Leewood, at the forks of Cabin Creek Road. Trial TR. 2236 - 39.
10. Approximately forty-eight (48) hours later, on Monday, September 9, 1991, the bodies of Margaret McClain and her daughter, Pamela Castenada, were found murdered in their home at Leewood. Trial Tr. 1738 - 40.
11. The victims' vehicle, a white Ford Taurus Station Wagon, and a rented VCR were

missing from the victims' residence. Trial Tr. 1812 - 13.

12. On Tuesday, September 10, 1991, the victims' vehicle was located near Chapmanville, West Virginia, by the State Police. Trial Tr. 1816 - 17.
13. While searching the victims' home a remote control to the missing VCR and the rental agreement were located. Trial Tr. 1812, 1829.
14. Petitioner was charged with leaving the scene of an accident on September 11, 1991, at which time blood and hair samples were collected. Trial Tr. 1956 - 60.
15. On Monday, September 16, 1991, the Petitioner was arrested and charged with the murders of Ms. McClain and Ms. Castenada.
16. The Petitioner was indicted in the January 1992 term of court. The five-count indictment includes:

Count One: Murder of Pamela Castaneda.

Count Two: Aggravated robbery of the automobile, video cassette recorder, and stereo of Pamela Castaneda.

Count Three: First degree sexual assault of Pamela Castaneda.

Count Four: Murder of Margaret McClain.

Count Five: Aggravated robbery of unspecified property from Margaret McClain.

Indictment No. 92-F-11, Circuit Court of Kanawha County.

17. The Petitioner's trial was conducted between November 23 and December 30, 1992, with the following evidence presented:
18. Steve Pritt testified that he was a friend of the Petitioner. Mr. Pritt identified the Petitioner as visiting him at his father's home in Leewood, West Virginia, in the late afternoon of September 7, 1991. This was a quarter of a mile from the victims' residence. Mr. Pritt testified that the Petitioner was wearing camouflage pants and

a military belt with a knife and a canteen. Trial Tr. 2346.

19. A canteen was recovered inside the victims' residence. Trial Tr. 1782.
20. Dora Back, a neighbor of the victims, testified by video that she last saw the victims' alive at 5:00 p.m. on Saturday, September 7, 1991. At that time she saw the victims' white Ford Taurus parked in front of their house. Trial Tr. 1348, 49 and 2299.
21. Ms. Back further testified that when she returned home at 8:30 p.m. the victims' car was gone. Trial Tr. 1351, 2299. Ms. Back did not see or hear any activity at the victims' house except to hear the dog barking from inside the house when someone knocked on the door on Sunday, September 8, 1991. Trial Tr. 1351, 1356, 2299.
22. Two residents of Leewood, West Virginia, Cathy Bragg and Ernest Jarrell, who lived seven and five houses from the victims, respectively, testified that they saw a man walk past their homes on Saturday, September 7, 1991, wearing camouflage, with a knife and a canteen on his belt. Trial Tr. 2304 – 06, 2321 – 22. Neither witness had previously mentioned seeing a knife in their statements to the police.
23. Rachel Britton, another neighbor of the victims, testified that the victims' car was gone at about 6:00 p.m., Saturday, September 7, 1991. Trial Tr. 1358 – 59.
24. Anita McKinney, a friend of the Petitioner, testified that the Petitioner drove to her house in Boone County, West Virginia, between 6:45 and 7:00 p.m. on Saturday, September 7, 1991. Trial Tr. 2252 – 54. She testified that the car was light colored and muddy. Trial Tr. 2255. Ms. McKinney also testified that the Petitioner said that he was taking his VCR for repair. Trial Tr. 2256.
25. Ms. McKinney testified that Petitioner was wearing a camouflage shirt and jeans. Trial Tr. 2256. He also had cuts and scrapes on his body. Trial Tr. 2258 – 59.

26. Ms. McKinney further testified that on Tuesday, September 10, 1991, the Petitioner called her and asked her to tell the police that he was at her house over the weekend and that he hitchhiked to her house, instead of driving a car. Trial Tr. 2263 – 65.
27. Jeanette Laws, another friend of the Petitioner, testified that between 7:30 and 8:00 p.m., on Saturday, September 7, 1991, the Petitioner drove to her house in Boone County, West Virginia, in a white Ford Taurus Station Wagon with a handicap license plate, wearing a camouflage jacket and a “white teddy bear T-shirt”. Trial Tr. 2331 – 33. He was bleeding from cuts and scratches. Trial Tr. 2334. She testified that the Petitioner left the t-shirt at her house. The t-shirt was recovered by Detective Johnson of the Sheriff’s Department. Trial Tr. 1841, 2334 – 35.
28. Another friend of the Petitioner, Denise Morgan, testified that the Petitioner drove to her house in Madison, Boone County, West Virginia, at approximately 11:30 a.m. on Sunday, September 8, 1991, in a white Ford Taurus Station Wagon. She further testified that the Petitioner left a CB radio, a VCR and walkman radio at her house.
29. The daughter and sister of the victims, Paula Sydenstricker, testified that the victims’ VCR had been disconnected from the television in the victims’ residence and was missing. She testified that the walkman that was recovered from Denise Morgan’s house belonged to her sister and was kept in the top drawer of her sister’s dresser. Trial Tr. 2501 – 2502.
30. An employee of the Rent-To-Own store in Kanawha City, West Virginia, Gene Moye, identified the VCR from Denise Morgan’s house as being the same VCR that was rented to the victim, Pamela Castenada, on August 31, 1991. Trial Tr. 2495.
31. Detective Johnson testified that he recovered the “Teddy Bear” t-shirt from Mrs.

Law's nephew at Mrs. Law's house. Trial Tr. 1910.

32. Patricia Lee, sister and daughter of the victims, testified that ten to fourteen days before their deaths, she had seen her sister wearing a white t-shirt, crafted by her sister, with a teddy bear appliqué on the front. She identified the teddy bear t-shirt recovered from Jeanette Law's house in court. Trial Tr. 1707.
33. Linda Harrison, a DNA analyst with the F.B.I. testified that she tested the bloodstains on the teddy bear t-shirt. One of the bloodstains matched the Petitioner, with a random match probability of one in twenty-five persons. Trial Tr. 2184. Ms. Harrison further testified that another bloodstain on the teddy bear t-shirt matched the victim, Pamela Castenada, with a random match probability of one in fifty-five thousand two hundred. Trial Tr. 2181, 2186.
34. Dr. Sopher, the State Medical Examiner, testified that based on the police investigation and his physical findings, there was nothing inconsistent with the victims being killed between the hours of 5:00 p.m. and 6:00 p.m. on Saturday, September 7, 1991. Trial Tr. 2570. Dr. Sopher also testified that both victims had died from multiple stab wounds. Trial Tr. 2560.
35. Detective Johnson of the Kanawha County Sheriff's Department testified that gauze pads were located on the victims' kitchen table, one of which had been opened and had a few drops of blood on it. Trial Tr. 1775.
36. Anita McKinney testified that when the defendant came to her house on Saturday, September 7, 1991, that he had cuts and scrapes. She further testified that one of his wrists had gauze on it where someone had previously treated an injury. Trial Tr. 2258, 59.

POST-CONVICTION HABEAS CORPUS PROCEEDINGS

37. An evidentiary hearing was held on January 17 and 18, 2006, upon the Petitioner's Habeas Corpus petition.
38. The Petitioner's main argument for the reversal of his conviction and the granting of a new trial is based on the video deposition of Tommy Lynn Sells. Sells is currently a resident of death row in Texas, based upon his conviction for the murder of a child and the malicious wounding of her cousin, another child in 1999.

THE CONFESSION OF TOMMY LYNN SELLS

39. Sergeant John Allen of the Texas Rangers testified that Sells was arrested for the Texas murder on January 2, 2000. Following his arrest Sells began confessing to a series of homicides across the United States. Sells sometimes took as many as four to five hours for investigators to get "one shred of evidence" to convince the agency investigating the case that Sells was involved. Dep. Tr. 7 - 10.
40. Sergeant Allen testified that on April 12, 2000 Sells began talking about a double homicide in Cabin Creek, West Virginia. Sells began relating details of the homicide as follows:

Sells stated that the double homicide occurred in Kanawha County, West Virginia in September of 1991. Sells stated that the victims were a mother and daughter who possibly resided near the Boone County line adjacent to Kanawha County. In addition, Sells recalled something called Cabin Creek or a sign that stated Cabin Creek. Sells recalled meeting the daughter named Pamela at the Route 60 Lounge and eventually ended up at her residence. According to Sells, Pamela resided with her elderly mother who Sells recalled as being in bad health. Sells was able to state the victims owned a white Ford Taurus automobile. Sells continued by stating he stayed at the daughter's residence in an upstairs attic for approximately two or three days prior to the murders. Sells stated that Pamela's mother had no knowledge he was present due to her poor health and inability to go upstairs to the attic

area. Sells stated that the murders were prompted when he took the mother's television set and traded it to a local subject for narcotics. Sells further stated that when Pamela's mother became aware of this she became angry and extremely agitated. Pamela and her mother were arguing and this is when he (Sells) decided to commit the murders. Sells claims he stabbed each of the victims repeatedly with a knife in the downstairs of the residence. Following the murders, Sells removed the victims' pants in order for the attack to appear to be sexually motivated. Sells said he left the victims' car and hitchhiked out of the area. Allen Dep. Ex. No. 1, pp. 2 - 3.

41. Sgt. Allen further testified that the exchange of information from Sells had never been this free-flowing during any of his "confessions" either before or after the statement concerning this particular homicide. Dep. Tr. 21 - 22.
42. Sgt. Allen further testified that when Sells was confronted with the fact someone else had been convicted of these murders, his response was "I didn't tell you I did that. I said I had a dream about that last night". Dep. Tr. 23.
43. On September 29, 2004, Sells testified by deposition from death row in Texas. He testified that he spent time locked up with the Petitioner at the county jail "after his trial, he was, it was like major - yes." Sells also testified that he assumed he was locked up at Mt. Olive with Smith, though he denied ever talking to him. Dept. Tr. 30 - 31.
44. Sells testified that he spent three days in the attic of the victim's house, without the knowledge of the elderly victim. He described the attic as apartment-like with a bathroom. Dep. Tr. 18 - 19.
45. Sells testified that after killing the victims he cleaned up the crime scene, carefully leaving nothing behind to identify him. Dep. Tr. 46 - 47.
46. Sells testified that he took a C.B. radio from the victims' house and carried it away in a tote bag. Dep. Tr. 56 - 57.

47. Sells testified that the victims' house was just an ordinary house but he was able to describe an afghan that he remembered was black and that he had told Jane (the public defender's investigator) "that's the reason I noticed that." Dep. Tr. 27.
48. Sells testified that the victims' "small" or "medium" dog did not try to bite him during the murders because he got along with pets and that he could kill people but would not harm an animal. Dep. Tr. 64 – 65.

IMPLAUSIBILITY OF TOMMY LYNN SELLS' CONFESSION

49. Sells' version of how he stayed at the victims' house for two or three days before the murders took place is in direct contradiction to the evidence in the case. There was no upstairs bedroom and bathroom in the victim's house where Sells could have stayed unnoticed until the "morning of the murders". Thomas Lee, the son-in-law and brother-in-law of the victims, testified that the attic space in the house was used for storage and that it contained an old mattress that had been leaned up against the wall. He testified that the room was dark and dust covered and had not been disturbed and further, it had not been used as a bedroom and there was no bathroom. Habeas Tr. 197 – 199.
50. The evidence log maintained by the clerk at the trial of this matter lists State's Exhibit Number 18 as being a "photograph of an upstairs bedroom and bathroom." As counsel for petitioner had the clerk produce the photo at the habeas proceeding, in order to cross-examine Thomas Lee, it was discovered by counsel that the photograph number 18 was of the downstairs bedroom and bathroom, and that the clerk's evidence log was erroneous, as was Mr. Sells' claim. Habeas Tr. 212
51. Sells referred to a black afghan on a couch in the victims' residence to prove that he

had actually been inside the victims' home. There is a photograph of a black afghan introduced into evidence in the trial and contained in the evidence maintained in the Circuit Clerk's Office. Defendant's Exhibit Number 10. A review of the photograph in the Clerk's Office revealed that the afghan was in fact photographed at another residence in the case and not the victims. Habeas Tr. 36; Trial Evidence Log p. 8

52. Sells' claim that he stole the C.B. radio from the victims' residence did not occur. The victims' C.B. radio was recovered from Denise Morgan's residence by Detective Ray Flint, after it was learned that the Petitioner had driven the victims' station wagon to the home of Ms. Morgan, where Petitioner left the victims' VCR and C.B. radio. Habeas Tr. 216; Trial Tr. 2451 – 55.
53. Sells' testimony that he carefully cleaned the crime scene and left nothing behind to identify him is clearly contradicted by the scene itself. An empty gauze wrapper, blood stained gauze and a canteen lying in the living room floor are all pieces of physical evidence that indicate that Sells was never in the residence. Trial Tr. 1775 – 82.
54. Sells' testimony that he was not bitten by the victims' dog because of his ability to get along with pets and that he would not harm an animal is further proof that Sells was never in the victims' residence. He never mentioned a dog in any of his "five" confessions. He was not aware that the victims' pug was locked in a cage in the living room of the victims' house and the small Chihuahua had been killed and stuffed in the laundry room. Habeas Tr. 202; Trial Tr. 1738 – 1740.
55. Sells spent significant time locked up in the Kanawha County Jail with the Petitioner. Habeas Tr. 131. In addition they were both residents of the West Virginia

Penitentiary at Mt. Olive. Yet Sells claimed that he and the Petitioner did not know each other. Dep. Tr. 31.

56. Sells recalls specifics including the make and model of the victims' car, the size and shape of the knife, what he was wearing, how he got to the house and how he left, but has no recall of where he was living at the time the crime was committed, where he went after the crime was committed or how long he stayed out of West Virginia after the crime. Dep. Tr. 47 – 54.
57. The neighbors of the victims last saw them alive between 5:00 – 6:00 p.m. on Saturday, September 7, 1991. Trial Tr. 1351, 1356, 2299, 1358 – 59. They also saw the victims' car at the house during that time period but it was gone by 8:30 p.m. on that date. Trial Tr. 1351, 2299.
58. It is uncontested that the Petitioner drove the victims' car to Anita McKinney's house in Boone County, West Virginia between 6:45 – 7:00 p.m. on Saturday, September 7, 1991. Trial Tr. 2252 – 54.
59. Sells' description of the crime occurring on the last morning he was in the victims' home, does not comport with testimony introduced at trial and is inconsistent and contradicted by the uncontroverted facts of the case. Dep. Tr. 59.

PETITIONER'S REMAINING ARGUMENTS FOR A NEW TRIAL

60. The testimony of Janet Smith Elswick that she saw the victims in their car, based on photographs in the newspaper concerning the murders, on a Sunday or Monday after the victims were "supposedly dead" is also completely inconsistent with the uncontroverted fact that the Petitioner had the victims' car in Boone County on Saturday, September 7, 1991. Petitioner's witness, Jeanette Laws Kirk, confirmed

that the Petitioner had the victims' car prior to the time that Mrs. Elswick claims to have seen the victims in the car. Ms. Laws further contradicted Mrs. Elswick's claim that she was told by Laws that the Petitioner had told her he found the victims dead and took their car. Habeas Tr. 44 – 53; Habeas Tr. 58 – 61.

61. Frederick William Whitehurst's testimony that there were quality control problems in the F.B.I. Laboratory was not based on first hand knowledge or expertise in the area of D.N.A. analysis. He gave no testimony that the D.N.A. testing in this case was improper or that the results reached were wrong. Habeas Tr. 87 – 92.
62. Dr. David Spitz gave no testimony other than matters which were addressed by Dr. Sopher in his trial testimony. In essence he disagreed with Dr. Sopher's opinion as to time of death. This evidence was available at the time of Petitioner's trial or it could have been discovered by due diligence. Dr. Spitz admitted on cross-examination that the physical changes to the victims' bodies did not show that Dr. Sopher was incorrect in his evaluation of the time of death. Habeas Tr. 125 – 126. Dr. Spitz was in disagreement about the determination of the life cycle of various spermatozoa, but he testified that this was a reasonable difference in opinions. Habeas Tr. 126.

THE RESPONDENT'S HABEAS TESTIMONY

63. Former Corrections Officer Pringle testified that the Petitioner and Tommy Lynn Sells were incarcerated together in the lockdown section of the Kanawha County Jail. Habeas Tr. 131. He testified that they were incarcerated together at the time Office Pringle began working at the jail in May of 1992. This time frame would have included the period prior to the Petitioner's trial which began in December of 1992.

Sells testified that he remained incarcerated with the Petitioner following his trial and that he had knowledge that it was "major". Dep. Tr. 30 – 31.

64. Diana Fanning testified that she had authored a biography of Tommy Lynn Sells. She testified that she had numerous interviews with Sells while he was in jail in Texas. Habeas Tr. 138.
65. Ms. Fanning testified that she interviewed Tommy Lynn Sells on November 6, 2001 about the double homicide in West Virginia. She testified that Sells denied doing the murders and said that the right person was behind bars, "Damien Smith". Sells stated that he was in jail with the Petitioner, though they did not share a cell. Sells also told Ms. Fanning that Petitioner had gotten someone else to write him letters about the crimes. Habeas Tr. 140 – 141. Ms. Fanning testified that when contacted by defense counsel in 2004 she again inquired of Sells concerning the Cabin Creek murders and that Sells was willing to talk to the defense for Petitioner. Habeas Tr. 167.

CONCLUSION OF LAW

66. The standard for granting a new trial upon a showing of newly discovered evidence is set-forth in, In Re: Renewed Investigation of the State Police Crime Laboratory, Serology Division, 633 S.E. 2d 762 (2006), and State v. Stewart, 161 W. Va. 127, 239 S.E. 2d 777 (1977).
 1. The evidence must appear to have been discovered since the trial;
 2. It must appear from facts in the defendant's affidavit that petitioner was diligent in ascertaining and securing his evidence, and that the new evidence is such that due diligence would not have secured it before the verdict;
 3. Such evidence must be new and material, and not merely cumulative; and

cumulative evidence is additional evidence of the same kind to the same point;

4. The evidence must be such as to produce an opposite result at a second trial on the merits; and
 5. A the new trial will generally be refused when the sole object of the new evidence is to discredit or impeach a witness on the opposite side.
67. The evidence adduced at the habeas hearing of Mr. Whitehurst and Dr. Spitz do not qualify as newly discovered evidence. At most, their testimony would be an attempt to impeach Linda Harrison, the F.B.I. Laboratory D.N.A. expert and Dr. Sopher, the State Medical Examiner. The Court is further of the opinion that their testimony, as presented, would not discredit the testimony at trial of either witness.
68. The testimony of Janet Smith Elswick that she saw the victims and their car after Saturday, September 7, 1991 is inconsistent with the overwhelming evidence that the Petitioner had possession of the victims' car on Saturday, September 7, 1991.
69. Ms. Elswick's testimony, in this Court's opinion, would not produce an opposite result at a second trial on the merits, based on its inconsistency as well as her lack of credibility in light of her impeachment by the testimony of Jeanette Laws.
70. The Court is of the opinion that the only evidence presented by the Petitioner which qualifies as "newly discovered evidence" is the "confession" of Tommy Lynn Sells.
71. "A confession by another person does not invariably require a new trial; the integrity of the confession is for the trial court." State v. King, 313 S.E. 2d 440 (1984).
72. Tommy Lynn Sells' "confession," standing alone, pales when compared with the overwhelming and largely uncontested evidence that the Petitioner was near the

victims' house shortly before the murders, having wrecked the automobile that he was driving; that he was in possession of the victims' automobile within less than two (2) hours of neighbors seeing the victims alive for the last time; that he was in possession of items belonging to the victims and normally kept in the victims' residence; that a t-shirt belonging to one of the victims, containing D.N.A. consistent with the petitioner and the victim, was left at the residence of a witness by the Petitioner; and that the Petitioner instructed a witness to lie to the police about where he was and how he got to the witnesses home to establish an alibi.

73. Tommy Lynn Sells was incarcerated with the Petitioner during the Petitioner's highly publicized trial;
74. Tommy Lynn Sells was incarcerated in the West Virginia Penitentiary with the Petitioner after the trial;
75. Tommy Lynn Sells has recanted his "confession" on more than one occasion;
76. Tommy Lynn Sell's testimony concerning spending three days in the victims' home, unknown to the elderly victim, while sleeping and eating and using the apartment-like upstairs bedroom and bathroom, are complete fabrications based on the evidence that there was no upstairs bedroom and bathroom, but only a dark dusty attic that was used for storage and was open to view from the downstairs of the victims' home.
77. It is apparent to the Court that by some means, Mr. Sells obtained the information concerning the upstairs bathroom and bedroom from the clerk's description on the evidence log of State's Exhibit Number 18. The description was entered incorrectly, as pointed out by both the Petitioner and the Respondent. There was no upstairs bathroom. State's Exhibit Number 18 clearly shows a downstairs bathroom.


78. It is further apparent to the Court that by some means, Mr. Sells obtained the information concerning a photograph of a black afghan on a couch. This specific fact appears to confirm his claim to have actually been at the crime scene; however, the couch and black afghan, as noted on the Trial Evidence Log, P. 8, were photographed in a residence that did not belong to the victims.
79. Those two (2) "mistakes" by Sells affect the integrity of his entire confession.
80. Based on the implausibility of Tommy Lynn Sells' confession, as well as the lack of integrity of the confession, this Court does not believe there is evidence any that would produce an opposite result at a second trial on the merits.

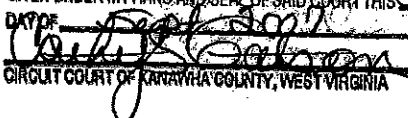

CONCLUSION

81. For the foregoing reasons, the requirements for a new trial based on newly discovered evidence have not been met by the Petitioner.
82. The conviction of the Petitioner is hereby **ORDERED AFFIRMED** and the writ of habeas corpus is hereby **ORDERED DISMISSED**.
83. The Clerk is directed to send a certified copy of this **ORDER** to counsel of record in this matter.

The Court notes the **OBJECTION** and **EXCEPTION** of the Petitioner to this ruling.

ENTERED THIS 14th day of September, 2007.


JENNIFER BAILEY WALKER, JUDGE
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS.
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 20
DAY OF September, 2007.

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA CLERK 

Certificate of Service

I, George Castelle, do hereby certify that on the 17th day of January, 2008, I delivered a copy of the foregoing Petition for Appeal by hand, upon:

Donald P. Morris
First Assistant Prosecuting Attorney
Geary Plaza
700 Washington Street East
Charleston, WV 25301

George Castelle
George Castelle

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CLERK OF COURT
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